Circuit Court for Montgomery County
Case No. 411484

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1533

September Term, 2016

SAMUEL SHIPKOVITZ

v.

CITY OF ROCKVILLE PLANNING COMMISSION, *et al.*

Berger,
Nazarian,
Arthur,

JJ.

Opinion by Nazarian, J.

Filed: October 4, 2017

AvalonBay Communities ("AVB"), a real estate developer, purchased property (the "Property") in the City of Rockville (the "City") to construct a multi-family apartment building. After the Property was rezoned, AVB filed a Level 2 Site Plan Application STP2009-00008 (the "Site Plan") with the City of Rockville Planning Commission (the "Planning Commission") to redevelop the Property (the "Project"). Samuel Shipkovitz, a nearby resident, challenged the Site Plan; after a public hearing, the Planning Commission approved it. Mr. Shipkovitz petitioned for judicial review in the Circuit Court for Montgomery County, which affirmed the Planning Commission's decision. He appeals and we affirm.

I. BACKGROUND

AVB purchased the Property, which consisted of multiple one-story office buildings, in 2004. At the time, it was zoned I-1, a service industrial zone that did not permit multi-family residential use. Because AVB wanted to construct a new multi-family apartment building there, AVB sought revisions to Chapter 25 of the Rockville City Code ("RCC") and Zoning Map to change the zoning to mixed-use business ("MXB"). On December 15, 2008, the Mayor and Council adopted the revisions to Chapter 25 of the RCC and Zoning Map, and the rezoning took effect on March 16, 2009.[1]

A few months later, AVB filed its Site Plan. Shortly thereafter, during a post-application Development Review Committee meeting, City staff informed AVB that the

[1] On April 27, 2009, the Mayor and Council adopted a master plan for the neighborhood containing the Property that, among other things, explicitly confirmed the rezoning.

Site Plan could not be approved because there was insufficient projected elementary school capacity to serve the Project according to the City's Adequate Public Facilities Standards (the "APFS"), which implement the Adequate Public Facilities Ordinance ("APFO") codified in Chapter 25 of the RCC. After negotiations among AVB, the City, and Montgomery County, the Mayor and Council of Rockville on June 1, 2015 modified the APFS school capacity test to increase the capacity level, and the Site Plan complied with the new standard.

AVB revised the Site Plan to respond to City staff comments, and the Planning Commission scheduled a public hearing for October 14, 2015. On September 25, 2015, AVB sent written notice of the hearing to 1,425 individuals and entities located within 1,250 feet of the Property, including Mr. Shipkovitz, and electronic notice to 124 recipients.[2] Before the hearing, various City departments issued detailed letters approving, with conditions, the Site Plan's water and sewer plan (the "Water and Sewer Authorization Letter"), the stormwater management concept plan (the "Stormwater Letter of Approval"), the preliminary sediment control plan (the "Sediment Control Letter of Approval") and the preliminary forest conservation plan (collectively with the other three letters, the "City Agency Approval Letters").

On October 7, 2015, a week before the public meeting, the Planning Commission published a detailed report (the "Staff Report") recommending approval of the Site Plan subject to conditions. The Staff Report stated that staff had "reviewed the proposed

[2] AVB also posted signs on the Property.

development for compliance with [Chapter 25 of the RCC] and [found] it to be consistent with those requirements," and that the Project was "compliant with all applicable codes and regulations," including the master plan for the neighborhood and Chapters 10.5, 19, and 25 of the RCC. The Staff Report also addressed school capacity, water and sewer, and fire and emergency services under the APFS, and found them all to be adequate, subject to the conditions in the Water and Sewer Authorization Letter. The Staff Report recommended that the Planning Commission condition approval on various conditions, including those listed in the City Agency Approval Letters.

The public hearing went forward as scheduled, and Mr. Shipkovitz was the only person to appear in opposition.[3] On a vote of six in favor and one opposed, the Planning Commission approved the Site Plan. The Commission relied on the findings and recommendations in the Staff Report and the testimony of Brian Wilson, a Principal Planner for the City, Barbara Sears, the representative of AVB, and Martin Howle, AVB's Senior Vice President. The Commission issued a letter dated October 16, 2015, that memorialized its decision to approve the Site Plan, identified twenty-one conditions, and detailed findings relating to the approval criteria set forth in RCC § 25.07.01.a.3.a.i–vii.

[3] In addition to his personal opposition, Mr. Shipkovitz also relayed opposition on behalf of the Twinbrook Citizens Association. In expressing his personal opposition to the Site Plan, Mr. Shipkovitz raised a variety of general concerns including radiation, environmental hazards, dogs, the number of apartment units, water and sewer deficiencies, parking, deficient notice requirements, the safety of the architecture and building materials, and the community's opposition to residential development.

Mr. Shipkovitz filed a petition for judicial review of the Planning Commission's decision on November 12, 2015. The circuit court held a hearing on June 10, 2016, at which Mr. Shipkovitz appeared, and entered a Memorandum Opinion and Order on July 8, 2016 affirming the Planning Commission's decision. Mr. Shipkovitz filed a motion for reconsideration, which AVB and the City opposed, that the court denied, stating that it had amended its Memorandum Opinion and Order "to reflect how notice was given" but that "the methodology of notice is a distinction without a difference." The court also filed an Amended Memorandum Opinion and Order reaffirming the Planning Commission's Site Plan approval. Mr. Shipkovitz filed a timely appeal.

We will discuss additional facts below as necessary.

II. DISCUSSION

We have rephrased and consolidated Mr. Shipkovitz's seven appellate issues[4] into four. He argues *first* that the Property's neighbors did not receive adequate notice of the

[4] In his brief, Mr. Shipkovitz phrases the Questions Presented as follows:

> **I. WAS IT ERROR FOR THE PLANNING COMMISSION AND THE TRIAL COURT TO HAVE IGNORED THE FACT THAT ALL PRESENTATIONS, COMMENTS, SPEECHES AND DOCUMENTS, SAVE ONE (THE NOTICE AFFIDAVIT WHICH WAS FALSE), THE STAFF REPORT, AND THE RECORD TO THE PLANNING COMMISSION WERE <u>NOT UNDER OATH OR OTHERWISE DECLARED OR AFFIRMED</u> OR OTHERWISE PROVIDED UNDER COMMON LAW OR EVIDENTIARY RULE STANDARDS TO BE CONSIDERED EVIDENCE OR TESTIMONY, AND DESPITE**

CASELAW THAT SUCH HEARINGS MUST BE EVIDENTIARY HEARINGS, COURT MEMORANDUM WRONGLY STATES IN ITS MEMORANDUM THAT SUBSTANTIAL EVIDENCE WAS IN THE RECORD?

II. WAS IT ERROR FOR THE COMMISSION AND THE TRIAL COURT TO ACCEPT AS ONE OF THE REQUIRED FINDINGS OF THE PL. COM., NAMELY UNDER RKVL CODE §25.07.01.3 (A)(1) "THAT THE APPLICATION WILL NOT
(VI) CONSTITUTE A VIOLATION OF ANY PROVISIONS OF THIS CHAPTER OR OTHER APPLICABLE LAW"
WHEN
(A) NUMEROUS LAWS THAT WERE BELIEVED TO BE VIOLATED WERE BROUGHT TO THE ATTENTION OF THE COMM. BY COMMR. LEIDERMAN AND BY THE PETITIONER, WERE NOT INVESTIGATED
AND
(B) THAT THE FINDING OF "NO VIOLATION OF LAW" WAS NOT MADE BY OR BASED UPON AN OPINION OF A MEMBER OF THE MARYLAND BAR AS REQUIRED BY MD. CODE §10-601.

III. NOTICE REQUIREMENT GROSSLY NOT MET. WAS THE TRIAL COURT AND PLANNING COMMISSION IN ERROR FOR ACCEPTING THE APPLICANT'S GROSSLY DEFECTIVE NOTICE (OF HEARING) AFFIDAVIT AND MAP AS COMPLYING WITH RKVL CODE §25.07.03 PER 25.05.03 WHICH REQUIRES THAT ALL OWNERS WITHIN 1250 FEET OF THE [OBLONG RECTANGULAR] SITE BE NOTICED BY MAIL—NOT JUST THOSE WITHIN 1250 FEET OF ONLY THE FOUR CORNERS OF THE SITE?

IV. WAS THE TRIAL COURT AND PLANNING COMMISSION IN ERROR WHEN IT BASELESSLY AND CONTRARY TO THE RECORD ONLY CONSIDERED A *FALSE* UNSWORN TO STAFF REPORT STATEMENT THAT THERE WERE 'NO STREAMS OR FLOODPLAINS PRESENT ON THE PROPERTY OR WITHIN 100 FEET THEREOF." "NO ENVIRONMENTAL BUFFER AREA ON THE SITE OR WITHIN 100 FEET OF THE [PROPERTY]" DESPITE THE FACT THAT THE RECORD CONTAINS MANY CITY ADMISSIONS BY THE CITY THAT THERE WERE BOTH OF THESE, INVLUDING STORMWATER AND SEWAGE TRANSMISSION CAPACITY DEFICIENCIES? [RELATED TO THE REQUIRED FINDING OF ADEQUATE FACILITIES, INCLUDING APFS, RKVL CODE SEC. §25.07.01.3(a)

V. WAS THE PLANNING COMMISSION AND THE TRIAL COURT IN ERROR WHEN EACH IGNORED PETITIONER'S CONSTITUTIONAL DUE PROCESS RIGHTS, INCLUDING UNDER THE 5TH AND 14TH AMENDMENTS AND PURSUANT TO THE 19TH AND 24TH ARTICLES TO THE MARYLAND DECLARATION OF RIGHTS TO ITS CONSTITUTION OF 1867?

VI. WAS THE COMMISSION AND TRIAL COURT IN ERROR WHEN IT ACCEPTED THE SUBFINDING THAT THE APFS WAS SATISFIED, DESPITE THE ADMISSION [LEIDERMAN] THAT THE LOCAL SCHOOL, TWINBROOK ELEMENTARY SCHOOL STILL GREATLY EXCEEDED THE MAXIMUM PERCENT OF OVERCAPACITY EVEN UNDER THE "RELATED" APFS STANDARD [120%]?

VII. SPOT ZONING

WAS THE PLANNING COMISSION AND TRIAL COURT IN ERROR WHEN IT IGNORED THE SPOT ZONING ASPECTS OF THE COMBINED SET OF AVB –ONLY INVOLVED ZONING CHANGES, WHICH

hearing. *Second*, he contends that the conduct of the Planning Commission's hearing denied him due process. *Third*, he challenges the Planning Commission's findings that the Site Plan would not overburden public facilities or violate the zoning ordinance and other applicable laws. *And fourth*, Mr. Shipkovitz asks us to determine whether the Planning Commission's approval of the Site Plan constituted "spot zoning."

A. Standard Of Review

The City of Rockville Planning Commission is an administrative agency. *See Anderson House, LLC v. Mayor of Rockville*, 402 Md. 689, 700 (2008). When reviewing appeals from circuit court orders reviewing administrative agency actions, we review the decision of the agency, not the circuit court, and review that decision deferentially:

> When we review the decision of an administrative agency or tribunal, "we [assume] the same posture as the circuit court . . . and limit our review to the agency's decision." *Anderson v. Gen. Cas. Ins. Co.*, 402 Md. 236, 244 [] (2007) (internal citation omitted). The circuit court's decision acts as a lens for review of the agency's decision, or in other words, "we look not *at* the circuit court decision but *through* it." *Emps. Ret. Sys. of Balt. Cnty. v. Brown*, 186 Md. App. 293, 310 [] (2009) [] (emphasis in original) (internal citations omitted).

> **ONLY AFFECTED AVB'S SINGLE OFFICE BUILDING PROPERTY ON THAT I-1 OFFICE BUILDING BLOCK IGNORING THE SUM OF THESE ACTIONS (REQUESTED ONLY BY AVB) AMOUNTING TO A SHAM TRANSACTION ZONING CHANGE OBTAINED BY THE EXTREMELY NUMEROUS (70+) ADMITTED *EXPARTE* MEETINGS BY AVB'S SEARS WITH CITY OFFICIALS?**

(Record citations omitted.)

> We "review the agency's decision in the light most favorable to the agency" because it is "prima facie correct" and entitled to a "presumption of validity." *Anderson v. Dep't of Pub. Safety & Corr. Servs.*, 330 Md. 187, 213 [] (1993) (internal citation omitted).
>
> The overarching goal of judicial review of agency decisions is to determine whether the agency's decision was made "in accordance with the law or whether it is arbitrary, illegal, and capricious." *Long Green Valley Ass'n v. Prigel Family Creamery*, 206 Md. App. 264, 274 [] (2012) (internal citation omitted). With regard to the agency's factual findings, we do not disturb the agency's decision if those findings are supported by substantial evidence. *See id.* (internal citations omitted). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 [] (1998) (internal citations omitted) (internal quotation marks omitted). We are not bound, however, to affirm those agency decisions based upon errors of law and may reverse administrative decisions containing such errors. *Id.*

Sugarloaf Citizens Ass'n v. Frederick Cty. Bd. of Appeals, 227 Md. App. 536, 546 (2016).

B. AVB Provided Adequate Notice.

Mr. Shipkovitz disputes that AVB complied with the notice requirement for a hearing, arguing that "a substantial percentage, perhaps 40% were not noticed under [AVB's] cockamany [sic] 4-corners-only compass circle method—ignoring those within 1250 feet of the lot who were not within 1250 ft. of a corner of the rectangular lot," a difference in methodology that, he contends, violated the federal and state constitutional rights of those who didn't receive notice. Instead, Mr. Shipkovitz would interpret the notice requirement to include "all of those within 1250 of anywhere on the oblong rectangular site." AVB contends that it provided proper notice, and we agree.

RCC § 25.07.03 defines the notice requirement for site plan meetings and hearings:

> The applicant for any site plan, project plan or special exception approval must provide notice of all area meetings and public meetings and public hearings of Approving Authorities (including continuance of a public hearing) relating to the subject application in accordance with the provisions of subsection 25.05.03.c,[5] and with the following:
>
> a. Notice must be mailed at least two (2) weeks prior to the meeting to all property owners, residents, civic associations and

[5] Subsection 25.05.03(c) covers written public notifications for public hearings:

> 2. In order to accomplish the required written notification, the following must be done:
>
> (a) The mailing or delivery list for such notice must be compiled from the current tax assessment listing all properties located within at least five hundred (500) feet of the boundaries of the subject property, unless another notification area is specified within this chapter;
> (b) Deliver notice, by hand delivery or first class mail, to each owner at the mailing address on the current tax assessment list, and also to the resident at the property location address, if addresses are different on the tax roll.
> (c) Mail notice, by first class mail, to civic associations and homeowners associations within five hundred (500) feet of the boundaries of the subject property unless another notification area is specified by this chapter.
>
> 3. Affidavit required. At least one week prior to any meeting for which the applicant is required to provide written notice, the applicant must file an affidavit stating that notice has been mailed or delivered in accordance with the requirements of this chapter, and must provide the mailing or delivery list in a format acceptable to the Chief of Planning.

> homeowner's associations within the specified distance for each type of review as follows:
>
> . . . .
>
> 2. Level 2 site plan—One thousand two hundred fifty (1,250) feet.
>
> . . . .
>
> b. In addition to the notice required above, for all Level 2 and project plan applications, electronic notice must be sent by the applicant to all homeowner's associations and civic associations within the City, the Planning Commission and the Mayor and Council.

Mr. Shipkovitz doesn't appear to dispute that he received notice of the hearing,[6] or that AVB provided notice to property owners within a 1,250 foot-radius circle around the Property.[7] Instead, he makes a geometric argument: the phrase "within…one thousand two hundred fifty (1250) feet" means that the Circle of Notice must be drawn from each corner of the Property, and that AVB's singular circle left out some properties around the edges. We agree with the Planning Commission, though, that AVB provided notice in a manner

[6] To the extent Mr. Shipkowitz actually received notice of the hearing and participated, he wouldn't have standing to challenge the lack of notice to others. *See Rogers v. Eastport Yachting Ctr., LLC*, 408 Md. 722, 736–37 (2009) (quoting *Clark v. Wolman*, 243 Md. 597, 599–600 (1966)). The purpose of the required notice provision is to inform property owners of the hearing, and a party who had knowledge and acted on that knowledge without reliance on the notification's absence or its defects cannot invalidate an administrative agency action based on a lack of notice. *Id.* at 737. AVB's Appendix reveals that notice was sent to "Samuel Shipkovitz Life Estate Brian M. Shipkovitz," and Mr. Shipkovitz doesn't claim that this was inadequate as to him. Rather than parsing the issue that finely, though, we will address the merits.

[7] There is no dispute that AVB sent notice of the hearing to over 1,400 property owners, homeowners, civic associations, and other entities pursuant to RCC §§ 25.07.03.a and 25.05.03.c.2, or that its notice affidavit complied with RCC § 25.05.03.c.3.

consistent with the City's practice and interpretation of RCC § 25.07.03.a.2, and that the City's and AVB's interpretation of the Code is consistent with its actual language. And although we offer no views on the relative mathematical precision of either boundary-drawing method, the straightforward circle AVB drew and used satisfied the law, and Mr. Shipkovitz hasn't identified any nearby resident or property owner who was deprived of notice and the opportunity to participate.

C. Mr. Shipkovitz's Rights To Due Process Were Not Violated.

Mr. Shipkovitz identifies several elements of the October 14, 2015 administrative hearing that, he argues, violated his due process rights. He contends that he was given only a limited time—three minutes—to make comments; that he was not permitted to offer testimony or cross-examine AVB's experts; and that the Planning Commission did not have appropriate evidence upon which it could base its decision.[8]

"[D]ue process does not require adherence to any particular procedure. On the contrary, due process is flexible and calls only for such procedural protections as the particular situation demands." *Md. Racing Comm'n v. Castrenze*, 335 Md. 284, 299 (1994) (citations omitted). "Due process is concerned with fundamental fairness in the proceeding, not with whether the agency has failed in some way to comply with a statutory requirement." *Calvert Cty. Planning Comm'n v. Howling Realty Mgmt., Inc.*, 364 Md. 301, 322 (2001). "Procedural due process in administrative law is recognized to be a matter

[8] Although AVB is correct that Mr. Shipkovitz did not challenge these alleged due process violations before the Planning Commission, he did testify about his inability to speak and to challenge the Site Plan at previous hearings. That, for present purposes, is close enough.

of greater flexibility than that of strictly judicial proceedings" and calls for the examination of "the totality of the procedures afforded rather than the absence or presence of particularized factors." *Cecil Cty. Dep't of Soc. Servs. v. Russell*, 159 Md. App. 594, 612–13 (2004) (citations omitted). "[T]he level of due process required [in an administrative proceeding] must be decided under the facts and circumstances of each case." *Bragunier Masonry Contractors, Inc. v. Md. Comm'r of Labor & Indus.*, 111 Md. App. 698, 713 (1996).

Our review of the record reveals no due process violations in this case. Mr. Shipkovitz was allowed to present his opposition to the Project and to state his grounds on the record.[9] The Planning Commission discussed his concerns with him before thanking

[9] With regard to the time limitation for his comments, Mr. Shipkovitz contends that he should have had an opportunity to present evidence at the hearing, rather than merely being afforded three minutes to make comments. The Planning Commission's Rules of Procedure, however, allow the agency to "impose a time limitation on comments" by generally allowing three minutes for individuals to speak. Planning Commission Rules of Procedure V.N.5 (stating that "[t]he[Rules] do not constitute jurisdictional requirements, and do not confer rights to impose obligations not otherwise conferred or imposed by law. Failure of the [Planning] Commission, its staff, or any party to comply with any provision of these Rules shall not invalidate any otherwise valid decision or action of the [Planning] Commission."). The Court of Appeals has upheld time limitations, including a three minute limitation with an opportunity to submit a written statement, because "[i]f there were not some limitation upon the time to be consumed by any one person at a hearing such as this where there is widespread public interest, many persons inevitably would be deprived of the right of orally expressing their views or such hearing would consume an inorinate amount of time and a person might well be placed at a serious disadvantage in attempting to make his views known." *Washington Cty. Taxpayers Ass'n v. Bd. of Cty. Comm'rs of Washington Cty.*, 269 Md. 454, 463 (1973). In fact, Mr. Shipkovitz spoke for more than three minutes—he acknowledges as much in his brief and AVB suggests that he testified for about twelve minutes—and following his testimony, the commissioners discussed and considered the topics he raised in his comments, including pets, parking, and the process for testing and remediating any hazardous materials found at the Property.

Mr. Shipkovitz for his comments,[10] and one of the commissioners even asked for clarification and further testimony about some of his concerns. Mr. Shipkovitz did not request additional time to speak, nor did he ask to cross-examine any of the witnesses.

Mr. Shipkovitz also complains that the Planning Commission erred by approving the plan when, he says, the record contained no evidence to support its findings, except for the "false/ perjurious Notice Affidavit." According to Mr. Shipkovitz, the Staff Report, which was not made available to the public, only contains "many false assertions" and cannot "be judicially considered evidence." We disagree. In Maryland, "administrative bodies are not ordinarily bound by the strict rules of evidence of a law court," *Widomski v. Chief of Police of Balt. Cty.*, 41 Md. App. 361, 378 (1979) (citation omitted), or by "the technical common law rules of evidence," *Dep't of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. 12, 31 (1996) (citation omitted); *accord Cremins v. Cty. Comm'rs of Washington Cty., Md.*, 164 Md. App. 426, 446 (2005) (administrative agencies are "generally not bound by the technical rules of evidence although [they] must observe fundamental fairness in dealing with the parties who appear before [them]" (citation omitted)); *Travers v. Balt. Police Dep't*, 115 Md. App. 395, 408 (1997) ("[I]t is well settled that the procedure followed in administrative agencies usually is not as formal and strict as that of the courts.

[10] Mr. Shipkovitz contends that he was only allowed three minutes to make his comments before the Planning Commission Chair shut him down, but as we read the transcript, the Chair merely wished to move on because Mr. Shipkovitz had finished with all of his comments, then asked whether there was "anything else [he] c[ould] add?" He offered a few additional comments, and then the Commission moved on (it was 11:44 p.m. at that point).

As such, the rules of evidence are generally relaxed in administrative proceedings." (citations omitted)).

"[F]or purposes of judicial review of an agency's final decision, the entire administrative record consists of all transcripts, documents, information, and materials that were before the final decision maker at the time of his or her decision." *Mehrling v. Nationwide Ins. Co.*, 371 Md. 40, 60 (2002) (footnote omitted); *accord* Md. Rule 7-206(b). The Planning Commission's Rules of Procedure do not require documents or materials to be supported by oath or other affirmation for agency consideration. *Cf. Cremins*, 164 Md. App. at 445 (failing "to object to the witnesses' not being sworn at the joint [administrative] hearing constitutes a waiver of appellants' right to complain now"). So the fact that certain documents or statements admitted during the Planning Commission hearing were "not under oath or otherwise declared or affirmed," (emphasis omitted), doesn't diminish their ability to support the Commission's decision to approve the Site Plan or the Commission's ability to rely on them.

D. The Planning Commission's Findings Were Supported By Substantial Evidence In The Record.

Mr. Shipkovitz argues that the Planning Commission failed to make all of the findings required under RCC § 25.07.01.a.3.a before approving AVB's site plan and that it offered no factual support for the findings it made. Specifically, he claims that (1) the Planning Commission incorrectly found that the site plan did not violate RCC § 25.07.01.a.3.a.iii because, he says, sewer capacity would be exceeded, storm water problems would ensue, one elementary school would be above the maximum

overcapacity,[11] and the site would only have one fire station within ten minutes;[12] and (2) that the approval violated RCC § 25.07.01.a.3.a.vi because "[n]o City official nor Pl[anning] Com[mission] Member at the hearing made any opinion as to whether any laws were violated," the Planning Commission failed to base its finding that there was no violation of the Code or the law upon the opinion of a Maryland attorney in violation of § 10-601 of the Business Occupations and Professions Article of the Maryland Code,[13] and the Planning Commission failed to consider the laws related to a building which used to have "dangerous radiation materials." He argues that the Planning Commission's approval of the site plan should be invalidated if any one of its findings is missing or unsupported. We disagree.

RCC § 25.07.01.a.3.a states as follows:

> A site plan application that does not implement a project plan or a special exception, may be approved only if the applicable Approving Authority finds that the application will not:
>
> i. Adversely affect the health or safety of persons residing or working in the neighborhood of the proposed development;

[11] One commissioner, who eventually stated that the Site Plan met the APFS, expressed this concern at the hearing, although he did not have enough information to determine whether approval of the Site Plan would harm one school by resulting in overcrowding.

[12] Although Mr. Shipkovitz did not raise all of these reasons for why RCC § 25.07.01.a.3.a.iii was violated during the Planning Commission's hearing, we discuss them all here because none of them amounts to surpass the highly deferential level we afford to the Planning Commission.

[13] While Mr. Shipkovitz did not raise this issue before the Planning Commission nor the circuit court, it would fail regardless because, in practice, every Planning Commission decision requires making findings of fact and applying those facts to the law without requiring that the commissioners be attorneys. Accordingly, it cannot be that such administrative agency decisions constitute the practice of law, which must be conducted by an attorney.

> ii. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood;
> iii. Overburden existing and programmed public facilities as set forth in article 20[14] of this chapter and as provided in the adopted adequate public facilities standards;
> iv. Adversely affect the natural resources or environment of the City or surrounding areas;
> v. Be in conflict with the Plan;
> vi. Constitute a violation of any provision of this chapter or other applicable law; or
> vii. Be incompatible with the surrounding uses or properties.

When determining the adequacy of public facilities, the Planning Commission "may include consideration of mitigation of impacts that are necessary to comply with the required level of service" and impose conditions to ensure that adequacy standards are met. RCC § 25.20.01.c.

After the hearing, and after voting to approve the Site Plan based on the findings and recommendations in the Staff Report and the hearing testimony, the Planning Commission's October 16, 2015 Decision Letter detailed its findings for each of the RCC

[14] RCC § 25.20.02.b states:

> An application for any development approval or any amendment thereto, that is subject to the provisions of this chapter, must not be approved unless the Approving Authority determines that public facilities will be adequate to support and service the area of the proposed development. Public facilities and services to be examined for adequacy will include, but not necessarily be limited to, roads and public transportation facilities, sewerage and water service, schools, and fire and emergency services protection.

§ 25.07.01.a.3.a criteria, including findings that adequate public facilities were available to serve the Project and that approval with conditions would not violate the RCC or other applicable law:

> The Site Plan is approved subject to the applicant's full compliance with the following:
>
> * * *
>
> **Public Works**
>
> 13. Comply with conditions of Water and Sewer Authorization [L]etter dated October 5, 2015, as may be amended.
> 14. Comply with conditions of [the Stormwater Letter of Approval] dated September 29, 2015, as may be amended.
> 15. Comply with conditions of [the] Sediment Control Letter [of Approval] dated September 29, 2015
> 16. Submission, for review, approval, and permit issuance by the D[epartment of] P[ublic] W[orks] [(DPW)], of the following detailed engineering plans, studies and computations, appropriate checklists, plan review and permit applications and associated fees. The following plans should be submitted . . . :
>   a. Stormwater Management (SWM) for on-site stormwater management;
>   b. Sediment Control Plans (SCP) for all disturbed areas;
>   c. Public Improvement (PWK) including all work proposed within . . . any existing or required storm drain, water and/or sewer easements. . . .
>
> * * *
>
> The Planning Commission based their approval on the following findings, in accordance with Section 25.07.01.a.3.a, which states that "a site plan application that does not implement a project plan or a special exception, may be approved only if the applicable Approving Authority finds that the application will not":
>
> * * *

iii) Overburden existing and programmed public facilities as set forth in Article 20 of this Chapter and as provided in the adopted [APFS];

The proposal is compliant with all requirements of the [APFO] as follows:

Schools
The Mayor and Council recently adopted amendments to the school standards of the APFO. The standard now matches the requirements of the County and increases maximum permitted capacity levels to 120%. In addition, total enrollment for the school type (e.g. elementary, middle, high school) is considered now, rather than for an individual school, and the test occurs in year five, not years one and two.

. . . Analysis of the students generated by the proposed development demonstrates that the proposal meets the requirements of the Ordinance.

* * *

Water and Sewer
The application has received conceptual Water and Sewer Authorization approval from the [DPW] for connection to the City's water and sanitary sewer systems. The Water and Sewer Authorization [L]etter lists project specific conditions of approval.

Fire and Emergency Service
The APFS requires a standard response time of no more than 10 minutes from at least two Fire and Rescue Service station for all proposed development. The subject site is located less than a mile east of Fire Station #23 . . . . Station 3 . . . is within 3 miles of the subject site. Both stations are within the 10-minute response time.

* * *

vi) Constitute a violation of any provision of this chapter or other applicable law;

> The proposal is compliant with the strict standards of [Chapter 25 of the RCC] and all other applicable ordinances and laws.

These findings are all supported by evidence contained in the administrative record, including the Staff Report, the City Agency Approval Letters, and the APFS. They are also supported by the City Planner's testimony that the Site Plan complied with the zoning requirements, was within the APFO for schools, and provided adequate water and sewer and emergency services. In contrast, Mr. Shipkovitz raised his issues with the Site Plan, and raises them now, in a generalized manner, and cites no support in the administrative record. Substantial evidence exists in the record to support the Planning Commission's decision to approve the Site Plan with conditions, and a reasoning mind readily could reach that conclusion.

E. The Planning Commission's Approval Of The Site Plan Did Not Constitute Spot Zoning.

Finally, Mr. Shipkovitz argues that AVB's counsel met with City officials as part of her plan "to change the zoning in secret, first from its then I-1 to MXB and then (STEP 2) get the City to allow a huge 240 apartment building in the middle of the office building block." No spot zoning, however, occurred here.

The Court of Appeals defined spot zoning as:

> the arbitrary and unreasonable devotion of a small area within a zoning district to a use which is inconsistent with the use to which the rest of the district is redistricted.... It is ... universally held that a "spot zoning" ordinance, which singles out a parcel of land within the limits of a use district and marks it off into a separate district for the benefit of the owner, thereby permitting

> a use of that parcel inconsistent with the use permitted in the rest of the district, is invalid if it is not in accordance with the comprehensive zoning plan and is merely for private gain.

Anne Arundel Cty. v. Harwood Civic Ass'n, 442 Md. 595, 602 n.7 (2015) (citation omitted); *see also MBC Realty, LLC v. Mayor of Balt.*, 192 Md. App. 218, 238 (2010) ("Spot zoning occurs when a small area in a zoning district is placed in a *different zoning classification* than the surrounding property." (emphasis added) (citation omitted)). But the Planning Commission's approval of the Site Plan did not amend the Property's zoning. The Property already had been rezoned from I-1 to MXB by the Mayor and Council of Rockville, not the Planning Commission, in December 2008, a change that became effective on March 16, 2009. The Property was rezoned before AVB filed the Site Plan on June 26, 2009, reviewed for compliance with the terms of MXB zoning, and approved on that basis.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELANT TO PAY COSTS.